

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MARK PETERSEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NATIONAL MILK PRODUCERS
FEDERATION, aka COOPERATIVES
WORKING TOGETHER; DAIRY
FARMERS OF AMERICA, INC.; LAND
O'LAKES, INC.; DAIRYLEA
COOPERATIVE INC.; and AGRI-MARK,
INC.,

Defendants.

Court File No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Indirect purchaser plaintiff Mark Petersen ("Plaintiff") brings this action on behalf of himself and all others similarly situated in the United States against Defendants National Milk Producers Federation, aka Cooperatives Working Together; Dairy Farmers Of America, Inc.; Land O'Lakes, Inc.; Dairylea Cooperative Inc.; and Agri-Mark, Inc. (collectively "Defendants"). Plaintiff, by and through his attorneys, based on his individual experiences, the investigation of counsel and experts, and information and belief allege as follows:

I. NATURE OF THE CASE

1. Cooperatives Working Together ("CWT") and its members have taken coordinated efforts over the past eight years to limit the production of raw farm milk through premature "herd retirements" in order to increase the price of raw farm milk,

which is used to supply milk¹ and other fresh milk products, including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream, to consumers.

2. Founded in July of 2003, CWT is “a voluntary, producer-funded national program developed by the National Milk Producers Federation (NMPF), to strengthen and stabilize milk prices.” CWT involves “dairy producers in every state,” who are producing “almost 70% of the nation’s milk.”²

3. CWT’s individual producer and cooperative members finance CWT’s programs by paying assessments based on their productivity. As of July 07, 2010, as CWT was conducting its tenth and final herd retirement, members paid assessments of \$0.10 per hundredweight (cwt) of raw farm milk produced.³

4. Each member of CWT, including each defendant other than NMPF/CWT, agreed to and did in fact pay these assessment so that CWT in turn could pay some members of CWT to prematurely retire their herds in order to “strengthen and stabilize” raw farm milk prices for all members of CWT.

5. Indeed, CWT’s primary activity since inception has been to increase the profitability of dairy producers through coordinated herd retirements. Through this program, dairy producers can submit bids for the price at which they will sell their herd to slaughter prematurely. CWT provides a formula through which farmers can calculate their bids essentially based on subtracting the price the farmer can recoup by selling them

¹ This refers to fluid as opposed to dry milk.

² http://www.cwt.coop/about/about_what_is.html.

³ [http://www.agweb.com/assets/import/files/Herd-retirement-bids-accepted-070710\(1\).pdf](http://www.agweb.com/assets/import/files/Herd-retirement-bids-accepted-070710(1).pdf).

at auction as slaughter cows from their market value as producing dairy cows, with CWT paying the difference.⁴

6. CWT then reviews and tentatively accepts bids subject to farm visits by CWT auditors who supervise the tagging of the herds for removal. The producers are then required to ship their cows for slaughter within 15 days after completion of the audit. CWT makes payment within 30 days of receiving verification that all cows have gone to slaughter.⁵ In 2009, for example, CWT membership assessments generated \$219 million in revenues for CWT, which spent \$217 million on herd reductions.⁶

7. The purpose and effect of the herd retirement program was to reduce the supply of raw farm milk in order to increase its price, which in turn increased the price paid by consumers for milk and other fresh milk products.

8. By all accounts, the herd retirement program was a huge success for CWT and its members. CWT financed ten rounds of herd retirements from 2003 to 2010, during which CWT was responsible for removing over 500,000 cows from production, reducing the nation's milk supply by approximately 10 billion pounds. According to studies commissioned by CWT from Dr. Scott Brown at the University of Missouri, the program resulted in a raw farm milk price increase of \$0.85/cwt by 2007 and \$1.75/cwt by 2010. By the end of the program in 2010, it was responsible for a cumulative increase in milk price revenue of \$9.55 billion. Further, Dr. Brown's studies indicate that "each

⁴ <http://www.cwt.coop/calculator/index.html>.

⁵ http://www.cwt.coop/action/action_herd_faqs.html#c.

⁶ <http://www.cwt.coop/sites/default/files/pdf/CWT-Website-Financial-Report-2009.pdf>.

herd retirement round has effects that extend forward years into the future,”⁷ so that dairy farmers are still significantly profiting from previous herd retirements.

9. By manipulating the supply of raw farm milk through herd retirement, price competition has been suppressed and prices have been supported at artificially high levels throughout the United States. As a result, indirect purchasers of milk and other fresh milk products have paid supracompetitive prices.

10. Accordingly, on behalf of himself and all others similarly situated, Plaintiff brings this suit for violation of state antitrust statutes and the common law of unjust enrichment.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over the instant matter pursuant 28 U.S.C. §1332(d) and the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711, *et seq.*, which vests original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds \$5 million and where the citizenship of any member of the class of plaintiffs is different from that of any defendant. The \$5 million amount-in-controversy and diverse-citizenship requirements of CAFA are satisfied in this case.

12. Venue is appropriate in this district under 28 U.S.C. § 1391(b) and (c), because during the Class Period many of the Defendants transacted business, were found, or had agents in this district and because a substantial portion of the affected interstate trade and commerce described below has been carried out in this district.

⁷ http://web.archive.org/web/20080301233800/http://www.cwt.coop/impact/impact_index.html.

13. This Court has personal jurisdiction over each Defendant because, inter alia, each Defendant: (a) transacted business throughout the United States, including in this district; (b) participated in the sale and distribution of milk throughout the United States, including in this district; (c) had substantial contacts with the United States, including in this district; and/or (d) was engaged in an illegal scheme and supply-reduction conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this district.

III. THE PARTIES

A. Plaintiff

14. Plaintiff Mark Petersen purchased milk and other fresh milk products in Minnesota during the Class Period and was injured as a result of Defendants' illegal conduct.

B. Defendants

15. Defendant National Milk Producers Federation ("NMPF") was established in 1916 and is based in Arlington, Virginia. The members of NMPF's 31 cooperatives, over 40,000 dairy producers, make the majority of the nation's milk supply. NMPF "promote[s] the economic well-being of dairy producers and their cooperatives through coordinated industry efforts."⁸ NMPF manages Cooperatives Working Together, the primary purpose of which was to strengthen and stabilize raw farm milk prices through nationally orchestrated herd retirements. According to NMPF, the "dairy farmer

⁸ <http://www.nmpf.org/>.

cooperative associations of the National Milk Producers Federation (NMPF) represent two-thirds of the nation's 60,000 commercial dairy farmers, including a large share of California milk producers."

16. Defendant Cooperatives Working Together ("CWT") "is a voluntary, producer-funded national program developed by NMPF, to strengthen and stabilize milk prices." While it is a separately-funded program, CWT is organized within the existing operating structure of NMPF. Dairy farmers in every state, producing almost 70% of the nation's milk, participate in CWT. These producers are either members of the 35 cooperative members of CWT, or one of over 130 independent dairy farmers who are members of CWT. The CWT Committee establishes policies and oversees CWT's programs and activities. The CWT Committee consists of the NMPF Board of Directors, representatives from participating cooperatives that are not members of NMPF, and representatives for independent producer members of CWT.⁹ CWT's website indicates that dairy farmers in every state invest in CWT. A major member of CWT is DFA, which has numerous member dairies in several states.

17. Defendant Dairy Farmers of America, Inc. ("DFA") has its headquarters and principal place of business in Kansas City, Missouri. It is the largest dairy farmer cooperative in the country. DFA has nearly 16,000 members in 48 states responsible for over 1.8 million cows.¹⁰ In 2007, DFA was the 29th largest private company in the United States with \$11.1 billion in revenue.¹¹ DFA's Chairman of the Board, Randy

⁹ http://www.cwt.coop/about/about_what_is.html; http://www.cwt.coop/cwt_faqs.html.

¹⁰ <http://www.dfamilk.com/>.

¹¹ http://money.cnn.com/galleries/2008/fortune/0805/gallery.private_companies.fortune/29.html.

Mooney, is also the Chairman of NMPF. Twelve of DFA's executives are on NMPF's Board of Directors, which also places them on the CWT Committee. DFA is and has been a contributing member of CWT. As such it has agreed to and in fact paid assessments of \$0.10 per hundredweight (cwt) of milk produced to CWT in order to strengthen and stabilize milk prices through nationally orchestrated herd retirements.

18. Defendant Land O'Lakes, Inc. is the second largest cooperative in the nation with 3,200 producer members and 1,000 member cooperatives comprised of over 300,000 producers. Located in Arden Hills, Minnesota, Land O'Lakes handles 12 billion pounds of milk annually and does business in all 50 states.¹² Land O'Lakes is and has been a contributing member of CWT. As such it has agreed to and in fact paid assessments of \$0.10 per hundredweight (cwt) of milk produced to CWT in order to strengthen and stabilize milk prices through nationally orchestrated herd retirements.

19. Defendant Dairylea Cooperative Inc. was founded in 1907 and is headquartered in Syracuse, New York. It is the fifth largest U.S. dairy cooperative with over 2,000 members and selling more than 6 billion pounds of milk annually.¹³ Dairylea is and has been a contributing member of CWT. As such it has agreed to and in fact paid assessments of \$0.10 per hundredweight (cwt) of milk produced to CWT in order to strengthen and stabilize milk prices through nationally orchestrated herd retirements.

20. Defendant Agri-Mark, Inc. is located in Lawrence, Massachusetts, and markets more than 300 million gallons of milk each year for more than 1,300 producer

¹² <http://www.landolakesinc.com/company/default.aspx>.

¹³ <http://www.dairylea.com/>.

members.¹⁴ Agri-Mark is and has been a contributing member of CWT. As such it has agreed to and in fact paid assessments of \$0.10 per hundredweight (cwt) of milk produced to CWT in order to strengthen and stabilize milk prices through nationally orchestrated herd retirements.

C. Unidentified Co-Conspirators

21. Various other persons, firms, and corporations, not named as Defendants in this Complaint, have participated as co-conspirators with Defendants in the violations alleged herein, and aided, abetted and performed acts and made statements in furtherance of the conspiracy.

22. The true names and capacities, whether individual, corporate, associate, or representative is unknown to Plaintiff at this time. Plaintiff will amend this Complaint to allege the true names and capacities of additional co-conspirators as their identities become known through discovery.

23. At all relevant times, milk producers, milk trade groups, and others, referred to herein as “co-conspirators,” as well as other various persons, companies, and corporations, the identities of which are presently unknown, willingly conspired with Defendants in their unlawful restraint of trade as described herein.

24. The acts alleged herein that were done by each of the co-conspirators were fully authorized by each of those co-conspirators, or ordered, or committed by duly

¹⁴ <http://www.agrimark.net/public/ourcoop.php>.

authorized officers, managers, agents, employees or representatives of each co-conspirator while actively engaged in the management, direction, or control of its affairs.

IV. FACTUAL ALLEGATIONS

A. Defendants Combined to Reduce Raw Farm Milk Production and Increase Prices Through Herd Retirement

25. Through press releases, which were contemporaneously posted to CWT's website, and newsletters, which incorporated information from the press releases and were also contemporaneously posted to CWT's website, NMPF and CWT communicated with their fellow cartel members. These communications allowed for the success of the scheme at issue. In fact, through 2008, CWT's website stated: "It is vital that CWT members see their investment at work. Review our informative newsletters to learn more about CWT."¹⁵ The website also explained that members can "track CWT creation, implementation, and impact through past press releases."¹⁶

1. The 2003 herd reduction reduces output.¹⁷

26. In a July 11, 2003, press release, the National Milk Producers Federation announced that the "dairy industry's new voluntary, producer-funded program to strengthen farm milk prices will begin this summer, following action this week by the National Milk Producers Federation Board at their summer meeting in Washington, DC. 'Now that we've reached the critical mass needed to move forward with this innovative program, Cooperatives Working Together, we are eager to finalize specific program

¹⁵ http://web.archive.org/web/20040218150134/http://cwt.coop/about/about_newsletters.html.

¹⁶ http://www.cwt.coop/about/about_news_releases.html.

¹⁷ http://www.cwt.coop/about/about_news_releases2003.html.

details and implement the plan as quickly as possible,' said Jerry Kozak, NMPF President and CEO. Participating producers will begin their investment by contributing the 5 cents per hundredweight assessment on their July milk. These contributions will be used to implement a multi-dimensional program to reduce milk supplies by 1.2 billion pounds over a 12-month period."

27. On July 23, 2003, NMPF announced that CWT would begin accepting farmer bids for participation in the first herd retirement. These bids stipulate how much each producer would accept to sell his/her entire milking herd. By September 16, 2003, "2,038 bids were submitted for the herd retirement program (under which a producer will be paid for selling his/her herd of milk cows)" and "approximately 33,000 cows will be culled due to the herd retirement program ... which will reduce the nation's milk output by 580 million pounds." According to CWT, the producer must agree to sell "all cows in which producer has an ownership interest, regardless of where the cows are located" even if the producer owns multiple dairies.¹⁸ Thus, the program in effect put smaller farmers out of business, while unfairly increasing the profits of agribusiness giants.


28. In an October 2, 2003, press release, NMPF explained that "[i]n order to ensure the integrity of the herd retirement process, those farms whose bids have been tentatively accepted are now being contacted by CWT field auditors shortly before the auditors visit the farms. That process will continue until all the farms have been audited, and the herds have been tagged for removal. To date, nearly half the 300 farms have

¹⁸ http://www.cwt.coop/action/action_herd_faqs.html.

been audited, and are now being liquidated.” By October 23, 2003, those audits were complete.

29. The national scope of the herd retirements is evidenced in the following chart:¹⁹

| 2003 CWT Herd Retirement | | | | | | |
|---------------------------------|--------------|--------------|---------------|---------------|---------------|---------------|
| | Region I | Region II | Region III | Region IV | Region V | Total |
| Total Bids | 350 | 338 | 707 | 360 | 283 | 2038 |
| Accepted Bids | 40 | 32 | 141 | 54 | 32 | 299 |
| Pounds of Milk | 54.6 Million | 59.1 Million | 111.6 Million | 146.6 Million | 237.3 Million | 609.2 million |
| Number of Cows | 2,848 | 3,342 | 6,463 | 8,190 | 11,881 | 32,724 |
| Average Bid | \$3.86 | \$4.00 | \$3.94 | \$4.08 | \$4.20 | \$4.02 |



2. The 2004 reduction of output.²⁰

30. According to a January 20, 2004, press release, “After six months of operation, the dairy industry’s historic selfhelp program, Cooperatives Working Together, has already had a sizeable impact on dairy producer prices. According to new

¹⁹ Regions I, II, III, IV, and V were renamed Northeast, Southeast, Midwest, Southwest, and West. See <http://www.cwt.coop/sites/default/files/pdf/past-herd-retirements-110810.pdf>.

²⁰ http://www.cwt.coop/about/about_news_releases2004.html.

analysis released by the National Milk Producers Federation, CWT will ultimately return nearly 60 cents per hundredweight for America's dairy farmers through this fall."

31. On September 13, 2004, NMPF announced a second round of herd retirement: "Starting October 1st, 2004, CWT will begin accepting bids from dairy farmers willing to sell their entire milking herds to CWT. The bidding window will be open through October, 29th, after which CWT staff will review the bids submitted. Producers who wish to bid must be paying the five cent per hundredweight CWT membership assessment, either through their cooperative, or directly. CWT also announced today that it has received a number of additional participation commitments recently, bringing the total percentage of milk production contributing to the program to 70.1% of the nation's milk supply."

32. By November 17, 2004, CWT accepted 378 bids from farmers seeking to retire their milking herds, representing approximately 51,700 cows. "Those retirements will remove 931 million pounds of milk, or 0.55% of the nation's supply, helping to stabilize farm-level prices that have been declining in recent months."

33. The across-the-country impact of this program is evidenced by the following chart:

2004 CWT Herd Retirement

| | Region I | Region II | Region III | Region IV | Region V | Total |
|----------------|--------------|--------------|---------------|---------------|---------------|---------------|
| Total Bids | 97 | 134 | 261 | 134 | 110 | 736 |
| Accepted Bids | 53 | 39 | 150 | 72 | 49 | 363 |
| Pounds of Milk | 68.9 Million | 62.1 Million | 141.9 Million | 284.0 Million | 351.5 Million | 908.4 million |
| Number of Cows | 3,871 | 4,066 | 8,479 | 16,184 | 17,878 | 50,478 |
| Average Bid | \$5.32 | \$4.76 | \$5.22 | \$5.47 | \$5.42 | \$5.24 |



3. The 2005 reduction in output.²¹

34. On March 9, 2005, Mr. Kozak stated, “With nearly two years history behind us, we can say without equivocation that CWT is having a positive impact on the lives of all dairy farmers in this country.”

35. By July 2005, “[n]early three-quarters of the nation’s milk supply” was contributing to CWT. During that same time period, CWT determined that its funds would be “primarily devoted to the retirement program,” and on August 10, 2005, announced a third herd retirement round.

36. CWT explained that the “first two programs reduced cow numbers by more than 83,000, representing reduced milk production equivalent to 1.6 billion pounds. Since CWT began operations in the summer of 2003, dairy prices have been at or above

²¹ http://www.cwt.coop/about/about_news_releases2005.html.

historical averages, preserving millions of dollars in income for dairy farmers.” However, “[i]n recent months, cow numbers have climbed up, along with milk output per cow, and that combination doesn’t bode well for future milk prices.... The CWT management committee, in looking at all of the economic indicators that we track, has decided that we need to proceed now to keep production from swamping demand and bringing prices down to unacceptably low levels. CWT estimates that there will be approximately 70,000 cows in this third retirement program to reach its goal of reducing future milk output by 1.9 billion pounds.”

37. “‘Based on our feedback from those whose bids we have accepted previously, we know that most producers view the decision to sell their herds through CWT as a long-term commitment which results in them exiting the business permanently,’ said Walt Wosje, Chief Operating Officer of CWT. ‘Despite the strengthened milk prices of the past few years, there are still many farmers who want to exit the business of dairy farming, and we know CWT offers a way for them to do so that benefits their fellow dairy producers and contributes to the health of the entire industry.’” According to a survey conducted by CWT, only 12% of those retiring their herds through the CWT program planned on engaging in dairy farming again.

38. By September 2005, membership in CWT reached 74% of the nation’s milk supply, with nearly 50 dairy cooperatives and more than 300 individual farmers. CWT reiterated that since it “started operations in July 2003, farm-level milk prices have been consistently above historic averages.”

39. On September 28, 2005, CWT announced “that it has tentatively accepted 448 bids from farmers to retire their milking herds. There will be approximately 66,000 cows removed, thereby eliminating 1.2 billion pounds of milk, or 0.7% of the nation’s annual supply.”

40. On December 5, 2005, Mr. Kozak explained that “[c]ow numbers and production per cow were both on the rise. Experience tells us that can be a formula for dramatic milk price drops. That’s why we initiated this most recent herd retirement We are pleased with the size program we were able to execute. This is our biggest retirement to date.”

4. In 2006 CWT boasts of the price effects of its first three rounds of reductions.²²

41. On September 26, 2006, CWT announced that an “independent economic analysis of the impact of Cooperatives Working Together has found that the historic dairy self-help program has raised farmers’ prices by at least 40 cents per hundredweight since it began operations in 2003. The analysis was performed by Dr. Scott Brown of the University of Missouri, a nationally-known farm policy expert who is often called on by the U.S. Congress to assess agricultural economic issues. Brown examined the impact of CWT’s three herd retirements, plus its ongoing export assistance program, while also taking into consideration other factors affecting the dairy supply in 2003-2006, such as the relative shortage of Canadian dairy replacements. His analysis showed that CWT

²² http://www.cwt.coop/about/about_news_releases2006.html.

alone was responsible for a minimum 40 cent average increase in prices from 2004-06, apart from the other factors affecting the market.”

42. Dr. Brown stated, “At the start of CWT, I was skeptical about the long-term effects that CWT would have on dairy farmers’ prices, but the evidence is clear that this program has raised the price that all farmers have received since it first began removing cows at the end of 2003.” According to his evaluation, the “cumulative impact of CWT from the start of 2004 through the first half of 2006 is \$1.97 billion in additional producer revenue,” as “the milk price impact has grown with each herd retirement program” and with the “normal attrition of cows in a herd [being] taken into consideration in determining the effect on milk production in the years following a herd removal.” Mr. Kozak concluded that even though CWT has “seen both rising and falling prices since 2003, there is no question that prices overall are better because of CWT.”

5. The 2007 reduction in output.²³

43. On February 6, 2007, CWT announced a fourth herd retirement, because, according to Mr. Kozak, “[a]ll of the economic indicators and benchmarks that we monitor in order to guide CWT’s decisions show that now is the appropriate time for us to initiate this herd retirement program.”

44. On March 15, 2007, CWT announced that it was “tentatively accepting 343 bids from 39 states, representing 54,000 cows which produced 1.03 billion pounds of milk” in the previous year. CWT explained the logistics: “Beginning the week of March

²³ http://www.cwt.coop/about/about_news_releases2007.html.

19th, CWT auditors will begin visiting those farms to check their milk production records, inspect the herds, and tag each of the cows for slaughter.”

45. CWT further explained that this retirement “will remove more than one billion pounds of milk, or 0.6% of the nation’s dairy supply, in an effort to help strengthen and stabilize farm-level milk prices. USDA projects a 2.3 billion pound increase in milk production for 2007 and this action by CWT effectively reduces that projection by 45 percent.” By June 6, 2007, the fourth round was complete.

46. In September 2007, CWT’s members decided to continue their support for the organization. “Kozak said that even with the record high farm prices of this summer, ‘producers recognize that we will need CWT in the future to help stabilize prices. The track record of the past four years shows what we can accomplish with this unique program when our industry works together.’”

47. On September 20, 2007, CWT released the results of further economic analysis by Dr. Brown. He evaluated the impact of CWT’s 2007 herd retirement, and its export assistance program activities during the first half of 2007, in addition to reviewing the effects of CWT’s past activities. Dr. Brown’s analysis showed that the combination of CWT’s programs helped raise farm-level milk prices by 75 cents per hundredweight this year, up from 67 cents in 2006, 42 cents in 2005, 18 cents in 2004, and 5 cents in the brief time it operated in 2003.

48. Dr. Brown stated, “CWT has had a growing influence on the financial returns of dairy farmers. My economic models account for the variety of supply and demand factors affecting prices, including the fact that in response to CWT, some

producers have added cows and produced more milk.” He continued, “[w]hen you separate out all the other factors affecting milk production, the fact remains that CWT has boosted the milk check of each farmer by 75 cents per hundredweight this year.” According to his assessment, U.S. dairy cow numbers were a net 66,000 head fewer than they would have been without CWT’s ongoing activities.

6. The two rounds of reductions in 2008 – time to trim output and raise prices.²⁴

49. In June 2008, the CWT Committee endorsed a continuation of the program, at the membership assessment level of 10 cents per hundredweight, through calendar year 2009.

50. On June 3, 2008, CWT announced its fifth herd retirement. Mr. Kozak explained, “All of the economic indicators and benchmarks that guide CWT’s decisions, including farmers’ cost of production, show that now is the appropriate time for us to initiate this herd retirement.” In a 2008 newsletter, CWT explained that “[d]airy farmers need to remember that CWT is a national program. Therefore, the benchmarks it monitors must be *national* benchmarks. Some regions of the country may be squeezed before other regions, but overall the benchmarks will tell CWT when to execute a herd retirement so to strengthen and stabilize dairy farmer milk prices.²⁵

51. By September 15, 2008, CWT completed the farm audits of its fifth herd retirement round, resulting in the removal of 24,860 cows representing 436 million pounds of milk.

²⁴ http://www.cwt.coop/about/about_news_releases2008.html.

²⁵ http://www.cwt.coop/about/about_newsletters2008.html.

52. This prompted another economic analysis from Dr. Brown, who noted that his economic models account for the variety of supply and demand factors affecting farm-level milk prices, including the fact that in response to CWT, some producers have added cows and produced more milk. He concluded, “When you separate out all the other factors affecting milk production, the fact remains that CWT has boosted the milk check of each farmer by 71 cents per hundredweight this year.”


53. On October 24, 2008, CWT announced its sixth herd retirement. “As farm-level milk prices drop to their lowest level in 18 months, CWT officials said it was time the program offered its members another opportunity to retire their herds to trim overall national milk production, and strengthen prices going into 2009.”

54. By December 10, 2008, CWT had accepted 184 bids in its second herd retirement of 2008, representing 61,078 cows and 1.2 billion pounds of raw farm milk. Farmers in 40 states submitted a total of 471 herd retirement bids in late November to CWT. According to the press release, “Kozak noted that although the costs of dairy feed and diesel fuel have dropped, milk prices have fallen faster.”

55. As with each of CWT's herd retirements, this one impacted all regions of the U.S.:

2008-2 Herd Retirement Results

| Region | Total Cows | Total Milk (Million lbs.) | Dairies | Bred Heifers | Bid Price per cwt. |
|---------------|---------------|---------------------------|------------|--------------|--------------------|
| Northeast | 2,295 | 43.7 | 22 | 25 | \$6.47 |
| Southeast | 3,750 | 65.4 | 28 | 58 | \$6.48 |
| Midwest | 3,290 | 64.4 | 48 | 37 | \$6.20 |
| Southwest | 17,522 | 304.6 | 39 | 641 | \$6.36 |
| West | 23,773 | 497.9 | 49 | 459 | \$6.87 |
| Totals | 50,630 | 976.0 | 186 | 1,220 | \$6.49 |



56. The agreement among Defendants and their relationship is evidenced by the presentation made by NMPF's COO at an October 29, 2008 "Town Hall Meeting" where he explained the logistics and benefits of the retirement program before concluding that "continued operation of the CWT program is essential for producers to continue to receive benefits from the program":

2nd 2008 Herd Retirement

- Announced October 24th
 - Press Release and news conference
 - E-mail and mailing to cooperative members
 - Mailing to individual producer members
 - Postcard announcement to all producers
- Must be CWT Member as of January 2008
- Bred Heifer Option included
- All forms and information on website, www.cwt.coop



2nd 2008 Herd Retirement Timeline

- ✓October 24, 2008 > Bid process opens
- ✓November 24, 2008 > Postmark deadline for submitting bids
- ✓Nov. 25 – Dec. 5, 2008 > Independent audit firm bid analysis
- ✓December 8-10, 2008 > Bids reviewed, final selection by CWT staff
- ✓December 15, 2008 > Farm audits begin
- ✓January 12, 2009 > All bidders receive notification



7. The three rounds of herd reductions in 2009 raise prices.²⁶

57. On February 11, 2009, CWT's members approved a change in program policy that required all members whose bids were accepted in future herd retirement programs to agree to cease dairy production for one year.

58. By February 17, 2009, CWT completed the farm audits of its sixth herd retirement round, removing 50,630 cows that produced almost one billion pounds of raw farm milk.

59. On April 1, 2009, CWT announced its seventh herd retirement. Mr. Kozak stated, "We all recognize that 2009 is shaping up to be among the toughest years on record for dairy farmers, but CWT will help shorten the price plunge farmers are facing, and speed the recovery."

60. By May 13, 2009, CWT had accepted 388 bids representing 102,898 cows and 2 billion pounds of farm milk production capacity, representing the largest single herd retirement carried out in the six-year history of CWT. Mr. Kozak explained, "Those that took advantage of CWT's offer to retire their herds will aid others still wanting to farm by reducing the amount of milk coming to market and strengthening prices going forward."

61. By July 2, 2009, CWT completed the farm audits of its seventh herd retirement round, removing 367 herds in 41 states, comprised of nearly 101,000 cows that produced 1.96 billion pounds of farm milk. "The national dairy herd will be noticeably

²⁶ http://www.cwt.coop/about/about_news_releases2009.html.

smaller this summer as a result of CWT,” said Jim Tillison, Chief Operating Officer of CWT.

62. On July 10, 2009, CWT announced that it would conduct its eighth herd retirement. “Carrying out a second herd retirement right on the heels of the largest-ever herd retirement should give us a double-barreled attack on milk production in a very short period of time, resulting in a farm level price recovery several months sooner than would otherwise occur,” Kozak said.

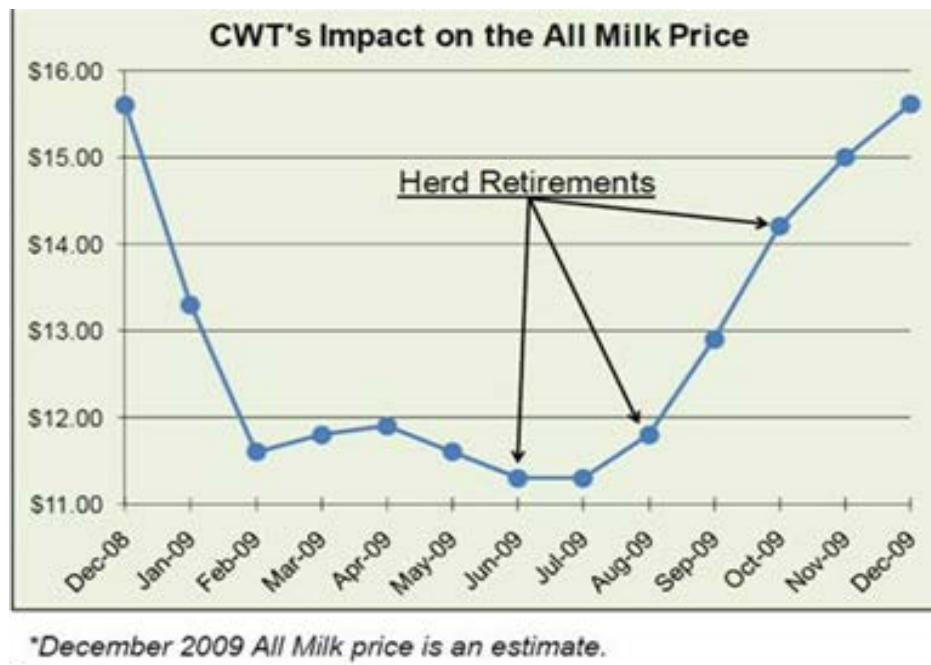
63. By September 24, 2009, CWT finished the farm audits for its eighth herd retirement, removing 74,114 cows that produced 1.5 billion pounds of farm milk.

64. On October 1, 2009, CWT announced its ninth herd retirement. “This third herd retirement of 2009, along with a stabilizing global economy, should further accelerate the recovery in dairy farmers’ prices,” said Mr. Kozak.

65. By October 27, 2009, CWT accepted 154 bids in the fourth herd retirement it had conducted in the last 12 months, representing 26,412 cows and 517 million pounds of farm milk. “Coming into 2009, CWT’s economists estimated that we would need to remove between five and six billion pounds of milk, the production of approximately 250,000 cows, through herd retirements,” said Mr. Kozak. “We are pleased that the participation in this third herd retirement of 2009 has brought us to our goal of aligning supply with demand, and hastening the recovery of farm-level milk prices that plunged because of the global recession.” Said Mr. Kozak, “We felt it was important to help milk prices continue to strengthen by conducting another herd retirement as soon as we completed farms audits for the previous round.”

66. In November 2009, Dr. Brown provided another economic evaluation of CWT's herd retirement program. His "analysis showed that the combined effect of CWT's cow-removal programs, as well as its export assistance program, helped raise farm-level milk prices by \$1.54 per hundredweight this year, and added \$2.4 billion to farm-level milk receipts in a year when dairy income is expected to shrink by more than \$10 billion because of the global recession." He explained that his econometric model "allows for the effects of the CWT to be separated from everything else that has occurred in the industry during the operation of CWT."²⁷

67. This chart shows the impact of CWT's three 2009 herd retirements on prices:



²⁷ <http://www.cwt.coop/sites/default/files/pdf/ScottBrownCWTONovember2009.pdf>.

CWT explains that these herd retirements were “made possible by the financial commitment of tens of thousands of dairy farmers” who “have in just a matter of months moved milk prices for all producers back to where they were a year ago.”²⁸

68. According to the analysis of Dr. Brown, milk prices in 2009 “would have averaged \$1.66 less had the CWT program not been in business – actively removing cows and, thus, reducing milk production in a timely manner.”²⁹

8. The 2010 herd reduction again boosts prices above the free market.³⁰

69. On May 27, 2010, CWT announced its tenth herd retirement. Said Mr. Kozak, “It is our belief that a herd retirement at this time will add to the positive momentum already building and should result in speeding up the milk price recovery already in progress.”

70. By July 7, 2010, CWT accepted 194 bids on what would be its last herd retirement, representing 34,442 cows and 653,893,409 pounds of farm milk.

71. In total, CWT was responsible for removing 506,921 cows from production, resulting in the removal of 9.672 billion pounds of farm milk as summarized in the following chart:³¹

²⁸ <http://www.cwt.coop/sites/default/files/newsletters/CWTNewsDecember2009.pdf>.


²⁹ <http://www.cwt.coop/sites/default/files/newsletters/CWTNewsJune2010.pdf>.

³⁰ http://www.cwt.coop/about/about_news_releases2010.html.

³¹ <http://www.cwt.coop/sites/default/files/pdf/past-herd-retirements-110810.pdf>.

Summary of Herd Retirements

| Herd Retirement | Farms Accepted | Cows Removed | Pounds of Milk Removed (billion lbs.) | Average Herd Size |
|-----------------|----------------|----------------|---------------------------------------|-------------------|
| 2003 | 299 | 32,724 | 0.609 | 109 |
| 2004 | 363 | 50,478 | 0.908 | 139 |
| 2005 | 442 | 64,069 | 1.174 | 145 |
| 2007 | 333 | 52,783 | 1.001 | 159 |
| 2008-1 | 201 | 24,585 | 0.432 | 122 |
| 2008-2 | 186 | 50,630 | 0.976 | 272 |
| 2009-1 | 367 | 101,040 | 1.960 | 275 |
| 2009-2 | 274 | 74,113 | 1.523 | 270 |
| 2009-3 | 150 | 25,340 | 0.505 | 169 |
| 2010 | 187 | 31,159 | 0.584 | 167 |
| Total | 2,802 | 506,921 | 9.672 | 181 |



72. On October 26, 2010, CWT voted to focus the program exclusively on building export markets and no longer fund herd retirement. The refocused program was to be funded at two instead of ten cents per hundredweight. Mr. Kozak claimed that the herd retirement program “has reached a point of diminishing returns, where there were a declining number of member farms that were expecting to use CWT as a means to liquidate their herds.”

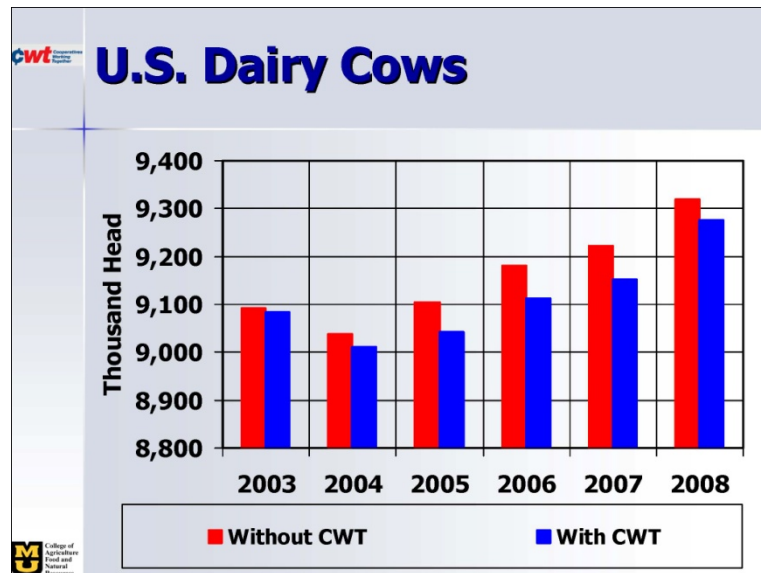
73. In a June 8, 2011, press release, NMPF noted that the CWT program no longer funds herd retirements or cow removals, and will focus exclusively on assisting member organizations with dairy exports, assuming it could obtain commitment by mid-November of a 70% membership participation level.³²

³² http://www.cwt.coop/about/about_news_releases.html.


B. Defendants' Conspiracy Raises Milk Prices Throughout the Class Period

74. As a direct result of the Defendants' and co-conspirators' reduction in output of farm milk, milk prices throughout the Class Period were supracompetitively higher than they would have been with competition.

75. In a 2008 report, Dr. Brown illustrated the effect of herd retirement on "U.S. Dairy Cows" in an analysis that "allows for the effects of the CWT to be separated from everything else that has occurred in the industry during the operation of the CWT program":




76. Dr. Brown then summarized the effect of the program on increasing the "US All Milk Price":




Effect of the CWT Program on the US All Milk Price *

| Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 * |
|------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| US All Milk Price | \$12.55 | \$16.13 | \$15.19 | \$12.90 | \$19.13 | \$19.08 |
| CWT Herd Retirement Impact | \$0.05 | \$0.16 | \$0.44 | \$0.55 | \$0.62 | \$0.57 |
| CWT Export Assistance Impact | NA | \$0.01 | \$0.01 | \$0.09 | \$0.16 | \$0.14 |
| TOTAL CWT Impact | \$0.05 | \$0.17 | \$0.45 | \$0.64 | \$0.77 | \$0.71 |




77. Dr. Brown concluded his 2008 report by describing the success of the CWT program:



CWT Summary Points

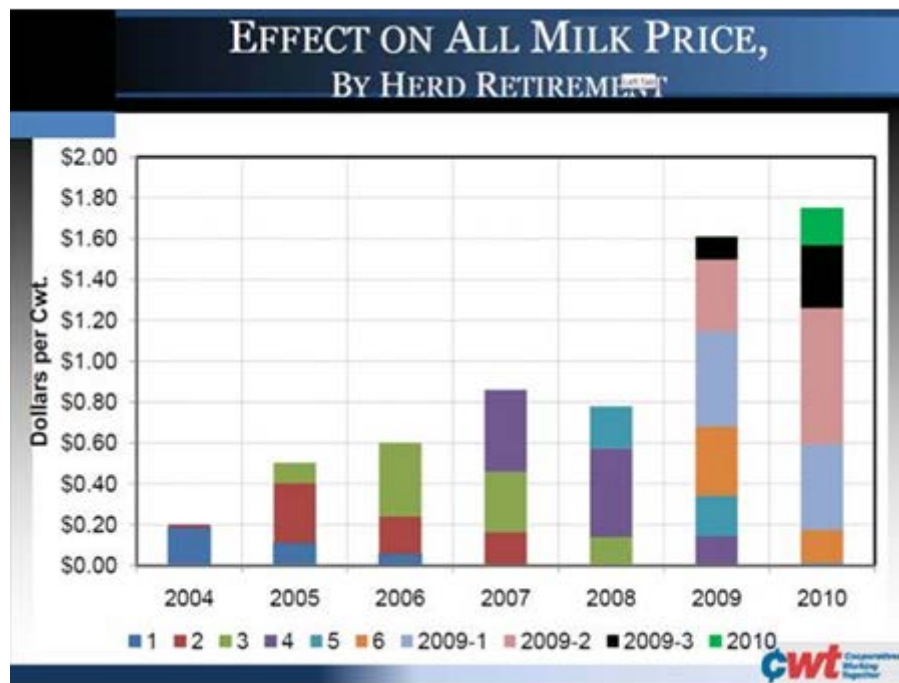
- **2008 Bottom Line:**
 - CWT will increase producers' milk prices by \$0.71 per cwt
 - The herd retirement program added \$0.57 per cwt to milk prices and the export assistance program added \$0.14 per cwt
- **On Average Over the 2004 to 2008 Period:**
 - CWT will increase producers' milk prices by \$0.55 per cwt
 - The herd retirement program added \$0.47 per cwt to milk prices and the export assistance program added \$0.08 per cwt
- The CWT program has generated an additional \$4.6 billion in milk market receipts at a program cost of \$0.3 billion
- Continued operation of the CWT program is essential for producers to continue receive benefits from the program



78. In Dr. Brown's January 2011 Report, entitled "The Economic Effects of the CWT Program," he analyzed the cumulative effect of the ten herd retirements.³³

79. Again, his analysis "allowed for the effects of the CWT to be separated from everything else that has occurred in the industry during the operation of the CWT program."³⁴

80. First, Dr. Brown analyzed the impact CWT's herd retirements have had on farm milk prices each year since its inception. CWT states, "The beauty of CWT herd retirements is that the impact of each herd retirement lasts several years. Each herd retirement completed builds on and adds to those that have been carried out before."



81. In the above chart, each color represents the effect of a herd retirement on farm milk prices. There were ten rounds of herd retirements and so ten colors in the

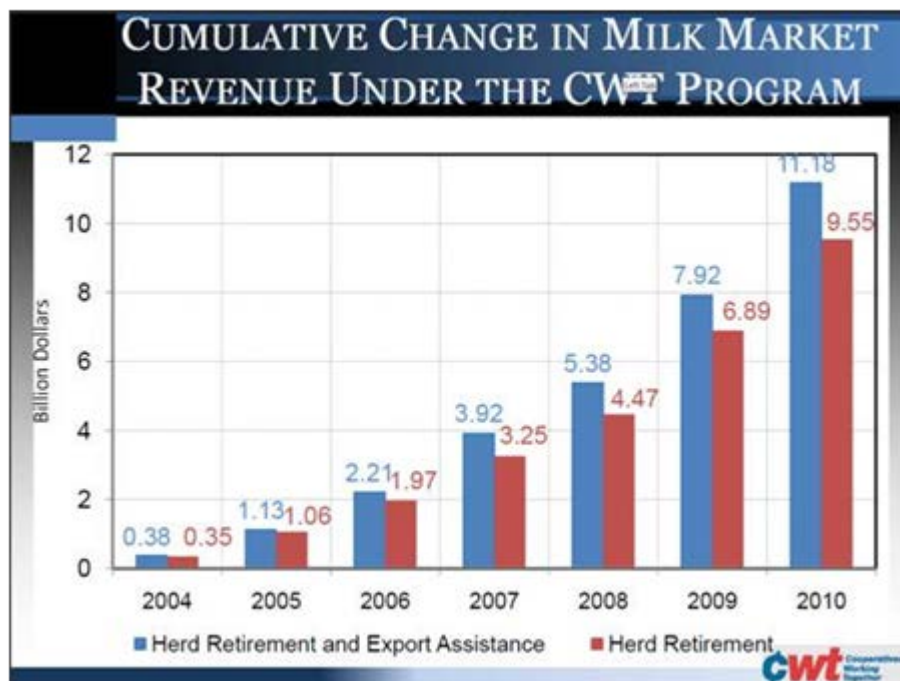
³³ <http://www.cwt.coop/sites/default/files/pdf/Economic-Effects-of-CWT-January-2011.pdf>.

³⁴ 2008 CWT Town Hall Meeting Presentation.

chart. The blue represents the effects of the first herd retirement, which occurred in 2003 and affected prices in 2004 through 2006. The red represents the effects of the second herd retirement, which occurred in 2004 and affected prices in 2004 through 2007. The green represents the effects of the third herd retirement, which occurred in 2005 and affected prices in 2005 through 2008, and so on. Thus, the later herd retirements are likely still to be affecting prices through to the present.

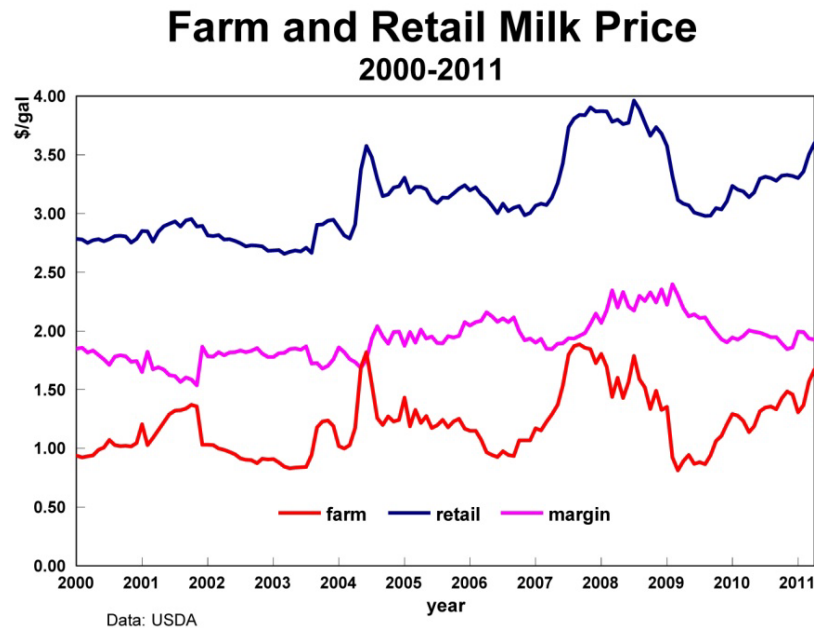
82. The chart also shows that the total increase in farm milk price in 2004 due to herd retirement was \$0.20 per cwt. The cumulative increase was \$0.50 per cwt in 2005; \$0.60 per cwt in 2006; \$0.86 per cwt in 2007; \$0.78 per cwt in 2008; \$1.61 per cwt in 2009; and \$1.75 per cwt in 2010.

83. Another chart from Dr. Brown's analysis shows the cumulative impact on producer revenue that the ten herd retirements have had:



84. This chart shows that as of 2010, CWT's restraints on milk production in the form of premature herd retirements had increased cumulative farm milk price revenues by over \$9 billion.

85. Moreover, CWT's impact on farm milk prices affects retail milk prices, as "[r]etail prices roughly track farm prices."³⁵ Jim Dunn, Professor of Agricultural Economics at Pennsylvania State University, explains that "retail prices do fall with farm prices, as well as rise."³⁶ In his July 2011 report entitled "Dairy Outlook," he graphs the direct relationship between farm and retail milk prices:³⁷



86. From the above chart, it is plain to see that retail milk prices closely follow farm milk prices over time. Thus, by manipulating the supply of farm milk through herd

³⁵ <http://www.modbee.com/2010/10/23/1396934/got-retail-milk-price-basics.html>.

³⁶ <http://www.agweb.com/news/news.aspx?ArticleId=305612>.

³⁷ <http://dairyoutlook.aers.psu.edu/reports/DairyOutlookjul11.pdf>.

retirement, price competition has been suppressed and, as a result, indirect purchasers of milk and fresh milk products have paid supracompetitive prices.

87. Moreover, prices have been supported at artificially high levels throughout the United States. The pricing of nearly all of the farm milk produced in the United States is regulated by milk marketing orders. Currently ten federal marketing orders regulate the sale of 70 percent of all milk produced in the country. California, which operates its own marketing order, regulates the sale of another 19 percent of the country's milk. Most of the remainder is regulated by other state marketing orders (Maine, Montana, Nevada, Virginia), and a small portion is not regulated by any marketing order.

88. The federal milk marketing orders raise the average price received by producers by setting minimum prices that processors must pay for Grade A milk according to its end-use. "Each month, federal orders set the minimum prices for milk used in cheese, and milk used in butter and dry milk according to formulae that take into account the wholesale prices of these products. The minimum price for milk used in fluid products (Class I) in each order is set as a fixed differential over the manufacturing-use minimum prices."³⁸ Minimum prices for soft dairy products are similarly determined as a mark-up over the minimum prices for milk in cheese and butter. California and the other states use similar formulae to set minimum prices.

89. Wholesale prices of commodity cheese, butter, and dry milk respond to market events, including changes in the supply of milk. Because regulated farm prices throughout the country are explicitly linked to these wholesale markets, regulated farm

³⁸ http://aic.ucdavis.edu/research1/DairyEncyclopedia_policy.pdf.

prices of milk in various regions tend to move in the same direction as the wholesale dairy product prices. Defendants sought to and successfully manipulated prices throughout the dairy marketing chain by reducing the supply of milk across the nation—thereby increasing wholesale prices of dairy products and, through marketing order regulations, increasing farm prices of milk.

90. The CWT herd retirement program raised farm prices of milk, and thus raised the price of the key input into a broad range of dairy products. Higher prices of farm milk subsequently resulted in higher retail prices of milk and other fresh milk products and harmed consumers of those products. Consumers of milk and other fresh milk products paid higher prices for dairy products than they would have paid had CWT not enacted its herd retirement program.

C. Defendants Are Not Entitled to the Limited Protections of the Capper-Volstead Act

91. CWT blatantly restricted farm milk production to increase farm milk prices because it purported to enjoy antitrust immunity under the Capper-Volstead Act. According to its website, “CWT is, in effect, a federation of cooperatives and producers formed in accordance with the Capper-Volstead Act and acting in association for the specific purpose of achieving strong and stable milk prices.”³⁹

92. As NMPF, established in 1916, and CWT must be well aware, however, the Department of Justice, Federal Trade Commission, and United States Department of

³⁹ http://www.cwt.coop/cwt_faqs.html.

Agriculture have long interpreted Capper-Volstead not to apply to restraints on production.

93. Moreover, the limited protections of Capper-Volstead are not even available unless the organization engaging in the coordinated efforts is exclusively made up of producers. Members of CWT, however, include non-producers, such as United Ag Services Cooperative, Inc. and National Farmers Organization, whose membership is open to non-producers. Accordingly, CWT does not qualify as a Capper-Volstead entity. Accordingly, CWT and its members do not enjoy the limited immunities of Capper-Volstead and neither does NMPF for having created and conspired with a non-exempt entity.

94. Further, Capper-Volstead requires that protected cooperatives be “operated for the mutual benefit of the members thereof” but NMPF, which contains numerous cooperatives that are not members of CWT, retains ultimate authority over CWT operations. Per its bylaws, CWT is subject to the general supervision and direction of the NMPF, and NMPF has retained the power to amend CWT’s bylaws, which are part of NMPF’s bylaws. Moreover, CWT’s organizational structure vests automatic, *ex officio* representation on the CWT committee with NMPF’s Board of Directors, who are not all CWT members.⁴⁰ That such non-members have influence over the direction of CWT, without paying dues and while benefitting from the herd retirements’ industry-wide effect, violates the statutory requirement.

⁴⁰ http://www.cwt.coop/sites/default/files/pdf/cwt_by_laws.pdf.

95. In particular, seven out of forty NMPF Board of Directors members and one out of seven NMPF Officers are not affiliated with a CWT member cooperative. The seven directors from non-CWT organizations are: (1) Steve Schlangen, Associated Milk Producers Inc.; (2) Ed Welch, Associated Milk Producers Inc.; (3) Tim den Dulk, Continental Dairy Products, Inc.; (4) Randy Geiger, Manitowoc Milk Producers Coop.; (5) Albert Knegendorf, Ellsworth Cooperative Creamery; (6) Dennis Donahue, Manitowoc Milk Producers Coop.; and (7) Brad Bouma, Select Milk Producers. The officer from a non-CWT organization is Assistant Treasurer Mike McCloskey, Select Milk Producers, Inc.⁴¹ This means that, per CWT bylaws, there are at least six policy-setting CWT Committee members who represent dairy cooperatives that are not themselves members of CWT, but still materially benefit from CWT policies despite not paying dues. This conflict of interest makes plain that CWT is not operated for the mutual benefit of its members but for the benefit of interested and involved non-members as well.

V. CLASS ACTION ALLEGATIONS

96. Plaintiff brings this action on behalf of himself and all persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or respective state statute(s), on behalf of all members of the following classes (collectively, the “State Classes”):

- (a) **Arizona**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half,

⁴¹ <http://www.nmpf.org/about-nmpf/board-of-directors>.

yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.

- (b) **California**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (c) **District of Columbia**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (d) **Florida**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (e) **Illinois**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (f) **Iowa**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.

- (g) **Kansas**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (h) **Maine**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (i) **Massachusetts**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (j) **Michigan**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (k) **Minnesota**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (l) **Mississippi**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half &

half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.

- (m) **Nebraska**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (n) **Nevada**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (o) **New Hampshire**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (p) **New Mexico**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (q) **New York**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.

- (r) **North Carolina**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (s) **North Dakota**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (t) **Oregon**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (u) **South Carolina**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (v) **South Dakota**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (w) **Tennessee**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half,

yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.

- (x) **Utah**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (y) **Vermont**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (z) **West Virginia**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.
- (aa) **Wisconsin**: All persons who purchased for their own use and not for resale milk and/or fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and sour cream) from 2004 through to the present.

Excluded from the State Classes are (1) Defendants and their co-conspirators; (2) any entity in which Defendants have a controlling interest; (3) Defendants' officers, directors, and employees; (4) Defendants' legal representatives, successors, and assigns; and (5) the

Court to which this case is assigned. The proposed State Classes are both ascertainable and share a well-defined community of interest in common questions of law and fact. Furthermore, this action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements.

97. Plaintiff does not know the exact number of Class members at the present time. However, due to the nature of the trade and commerce involved, there are many thousands of class members, geographically dispersed throughout the nation such that joinder of all Class members is impracticable. Included in each state class are consumers, school districts and any end payor who purchased milk and who did not resell that milk.

98. The common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to individual circumstances of any Class member include, but are not limited to, the following:

- (a) Whether Defendants and their co-conspirators engaged in a contract, combination or conspiracy to raise, stabilize, fix and/or maintain prices of farm milk sold in the U.S. by restricting farm milk production through herd retirements;
- (b) The duration and extent of the alleged contract, combination or conspiracy;
- (c) Whether Defendants and their co-conspirators were participants in the contract, combination or conspiracy alleged herein;

- (d) The effect of the contract, combination or conspiracy on the prices of milk and fresh milk products in the United States during the Class Period;
- (e) Whether the conduct of Defendants and their co-conspirators caused injury to Plaintiff and other members of the State Classes;
- (f) Whether the alleged contract, combination or conspiracy violated state antitrust statutes; and
- (g) Whether the alleged conduct violated the common law of unjust enrichment.

99. Questions of law and fact common to members of the State Classes predominate over any questions which may affect only individual members.

100. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will fairly and adequately protect the interests of the State Classes. Plaintiff's interests are not antagonistic to the claims of the other Class members, and there are no material conflicts with any other member of the State Classes that would make class certification inappropriate. Plaintiff has retained competent counsel experienced in complex antitrust and consumer protection class action litigation and will prosecute this action vigorously.

101. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts if individual litigation of numerous cases would proceed. By contrast, the conduct of this

action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

102. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues.

103. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the benefits of the class action procedure, including, but not limited to, providing Class members with a method for the redress of claims that may not otherwise warrant individual litigation.

VI. ANTITRUST INJURY

104. The effect of Defendants' conduct as described herein has been to artificially inflate the prices of milk in the United States. By manipulating the supply of farm milk through herd retirement, price competition has been suppressed and prices have been supported at artificially high levels throughout the United States, and, as a result, end purchasers of milk and milk products have paid supracompetitive prices.

VII. FRAUDULENT CONCEALMENT AND TOLLING

105. Throughout the Class Period, Defendants and their co-conspirators engaged in a successful, illegal price-fixing and supply control conspiracy that was self-concealing. Defendants effectively, affirmatively, and fraudulently concealed their

unlawful combination, conspiracy, and acts in furtherance thereof from Plaintiff and the members of the Classes. Defendants effectuated their concealment by, among other things, falsely claiming that their activities were cloaked under the protections of the Capper-Volstead Act. Plaintiff did not know until recently that CWT could not invoke Capper-Volstead's limited protections for the reasons discussed herein.

106. Plaintiff did not know nor could he have known that the prices for milk and other fresh milk products were artificially inflated and maintained by virtue of Defendants' illegal price-fixing and supply control conspiracy, and that Plaintiff and members of the Classes were paying higher prices.

107. Plaintiff has exercised due diligence by promptly investigating the facts giving rise to the claims asserted herein upon having reasonable suspicion of the existence of Defendants' conspiracy.

108. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that Plaintiff and the Class members have as a result of the anticompetitive conduct alleged in this Complaint.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF STATE ANTITRUST AND RESTRAINT OF TRADE LAWS

109. Plaintiff incorporates and reallege, as though fully set forth herein, each of the paragraphs set forth above.

110. In response to market conditions, and in an effort to supracompetitively inflate the prices of farm milk, beginning in 2003, and continuing thereafter through 2010, the Defendants and their co-conspirators engaged in a continuing contract, combination and conspiracy in restraint of interstate trade and commerce, which had the purpose and effect of fixing, raising, maintaining and/or stabilizing the prices of milk at artificially high, non-competitive levels in the United States.

111. The aforesaid contract, combination and conspiracy between and among the Defendants and their co-conspirators was furthered and effectuated, among other ways, by the following acts:

- (a) Prior to the Class Period, farm milk prices could not be maintained due to a fluctuating imbalance of supply over demand – after spurts of high prices, producers would add more production capacity and prices would fall again.
- (b) Against this backdrop, the Defendants acted in concert with competitors, with and through CWT and other trade groups, and with non-member conspirators, and contracted, conspired, and combined to effectuate a substantial reduction of the production of farm milk, which allowed for a series of substantial supracompetitive increases in milk prices.
- (c) As part of Defendants' agreement to supracompetitively inflate the price of farm milk, the Defendants conspired to substantially reduce farm milk production through ten phases of herd retirements, which

removed over 500,000 cows from production and reduced the nation's farm milk supply by over 9.672 billion pounds. These actions were extraordinary, non-competitive, and contrary to economic fundamentals.

- (d) To maintain their overarching conspiracy to supracompetitively raise the price of milk, Defendants took significant steps throughout 2003 to 2010, which resulted in supracompetitive prices for milk and other fresh milk products throughout the Class Period.

112. The conspiracy had its intended effect, as Defendants benefitted from their limitations on production as described herein.

113. For the purposes of effectuating the aforesaid contract, combination and conspiracy, the Defendants and their co-conspirators:

- (a) Agreed among themselves to fix, raise, maintain and/or stabilize the prices of farm milk in the United States;
- (b) Agreed among themselves to restrict the supply of farm milk by implementing and coordinating herd retirements; and
- (c) Agreed among themselves to implement supracompetitive increases in the prices of farm milk in the United States.

114. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the State Classes have been injured in their business and property in that they have paid more for milk and/or other fresh milk products than they otherwise would have paid in the absence of Defendants' unlawful conduct.

115. By reason of the foregoing, Defendants have violated Arizona Revised Statutes §§ 44-1401, *et seq.*

116. By reason of the foregoing, Defendants have violated California Business and Professions Code §§ 16720, *et seq.*

117. By reason of the foregoing, Defendants have violated District of Columbia Code Annotated §§ 28-4501, *et seq.*

118. By reason of the foregoing, Defendants have violated the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

119. By reason of the foregoing, Defendants have violated the Illinois Antitrust Act, Illinois Compiled Statutes, §§ 740 Ill. Comp. Stat. 10/1, *et seq.*

120. By reason of the foregoing, Defendants have violated Iowa Code §§ 553.1, *et seq.*

121. By reason of the foregoing, Defendants have violated Kansas Statutes Annotated §§ 50-101, *et seq.*

122. By reason of the foregoing, Defendants have violated the Maine Revised Statutes 10 M.R.S. §§ 1101, *et seq.*

123. By reason of the foregoing, Defendants have violated Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

124. By reason of the foregoing, Defendants have violated Minnesota Annotated Statutes §§ 325D.49, *et seq.*

125. By reason of the foregoing, Defendants have violated Mississippi Code Annotated §§ 75-21-1, *et seq.*

126. By reason of the foregoing, Defendants have violated Nebraska Revised Statutes §§ 59-801, *et seq.*

127. By reason of the foregoing, Defendants have violated Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

128. By reason of the foregoing, Defendants have violated New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

129. By reason of the foregoing, Defendants have violated New Hampshire Revised Statutes §§ 356:1, *et seq.*

130. By reason of the foregoing, Defendants have violated New York General Business Laws §§ 340, *et seq.*

131. By reason of the foregoing, Defendants have violated North Carolina General Statutes §§ 75-1, *et seq.*

132. By reason of the foregoing, Defendants have violated North Dakota Century Code §§ 51-08.1-01, *et seq.*

133. By reason of the foregoing, Defendants have violated Oregon Revised Statutes §§ 646.705, *et seq.*

134. By reason of the foregoing, Defendants have violated South Carolina's Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

135. By reason of the foregoing, Defendants have violated South Dakota Codified Laws §§ 37-1-3.1, *et seq.*

136. By reason of the foregoing, Defendants have violated Tennessee Code Annotated §§ 47-25-101, *et seq.*

137. By reason of the foregoing, Defendants have violated Utah Code Annotated §§ 76-10-911, *et seq.*

138. By reason of the foregoing, Defendants have violated Vermont Stat. Ann. 9 §§ 2451, *et seq.*

139. By reason of the foregoing, Defendants have violated West Virginia Code §§ 47-18-1, *et seq.*

140. By reason of the foregoing, Defendants have violated Wisconsin Statutes §§ 133.01, *et seq.*⁴²

SECOND CAUSE OF ACTION UNJUST ENRICHMENT

141. Plaintiff incorporates and reallege, as though fully set forth herein, each of the paragraphs set forth above.

142. To the detriment of Plaintiff and Class members, Defendants have been and continue to be unjustly enriched as a result of the unlawful and/or wrongful conduct alleged herein. Defendants have unjustly benefited by receiving higher prices for farm milk, which higher prices were passed along to consumers purchasing milk and other fresh milk products, than would have been possible absent the unlawful and/or wrongful conduct.

143. Between the parties, it would be unjust for Defendants to retain the benefits attained by their actions. Accordingly, Plaintiff and Class members seek full restitution

⁴² A demand letter will be sent under Massachusetts General Law Annotated chapter 93A, *et seq.*, and an amendment adding claims under that law will be made in 30 days if necessary.

of Defendants' enrichment, benefits and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members pray for relief as set forth below:

- A. Certification of the action as a Class Action pursuant to Federal Rule of Civil Procedure 23, and appointment of Plaintiff as a Class Representatives and his counsel of record as Class Counsel;
- B. A declaration that Defendants' conduct constituted an unlawful restraint of trade in violation of the state statutes alleged herein and that Defendants are liable for the conduct or damage inflicted by any other co-conspirator;
- C. Restitution and/or damages to Class members for their purchases of milk and/or fresh milk products at inflated prices;
- D. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
- E. Pre-judgment and post-judgment interest on such monetary relief;
- F. Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendants as a result of the anticompetitive conduct alleged in herein;
- G. The costs of bringing this suit, including reasonable attorneys' fees; and
- H. All other relief to which Plaintiff and Class members may be entitled at law or in equity.

X. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby requests a jury trial on any and all claims so triable.

Dated: October 27, 2011

s/Daniel E. Gustafson
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